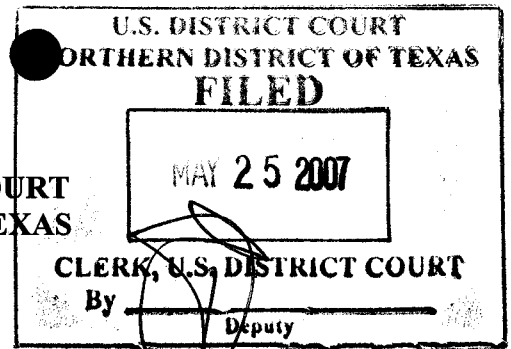


P  
✓ [initials]

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



TIGI LINEA LP,

Plaintiff,

v.

BOCCHI LABORATORIES, INC.,

Defendant.

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3-07 CV 0943-P

CAUSE NO. \_\_\_\_\_

11723

ORIGINAL

ORIGINAL COMPLAINT

COMES NOW, TIGI LINEA LP (hereinafter "TIGI"), plaintiff, and files this its Original Complaint complaining of Defendant Bocchi Laboratories, Inc. (hereinafter "Bocchi"), and for cause of action would show the Court as follows:

I.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff TIGI is a a Texas limited partnership having its principal place of business at 1655 Waters Ridge Drive, Lewisville, Texas 75057.

2. Defendant Bocchi, is on information and belief, a California corporation, with its principal place of business in Santa Clarita, CA. It may be served with process by service upon Robert Fitzwarner, Corporate Controller, Bocchi Laboratories, Inc., 26321 Ferry Court, Santa Clarita, CA 91350.

3. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332 for the reason that the amount in controversy, exclusive of interests and costs, exceeds \$75,000.00 and this matter is between citizens of different states. This Court has pendent and ancillary jurisdiction as well.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 for the reason that a substantial part of the events or omissions giving rise to the claims occurred in this district.

5. This Court has personal jurisdiction over the Defendant pursuant to the Long Arm Statutes of Texas and the Federal Court's application thereof. Tex. Civ. Prac. & Rem. Code §17.021. The claims made in this case arise out of or are connected with business which Defendant transacted in the State of Texas. Defendant has sufficient contacts with the State of Texas such that this Court's exercise of personal jurisdiction over said Defendant would not offend traditional notions of fair play and substantial justice.

## II.

### **FACTUAL BACKGROUND**

6. Plaintiff incorporates and re-alleges the averments contained in paragraphs 1 through 5, as if set forth in full.

7. TIGI is a seller of professional haircare products. One of the haircare products sold by TIGI is its "S Factor<sup>TM</sup>, Creamy Molding Wax" (hereinafter, "TIGI Creamy Wax"). The TIGI Creamy Wax is ordinarily just as described, creamy. It is sold for the purpose of being applied to a user's hair to achieve a particular aesthetic result.

8. Bocchi is manufacturer of toilet preparations, including haircare products. On or around February 14, 2005, Bocchi informed TIGI that it could manufacture the TIGI Creamy Wax final product in accord with the product's formulation and packaging specifications and so that it was acceptable for its intended use.

9. On or around April 11, 2005, Bocchi and TIGI agreed that Bocchi would manufacture and supply TIGI with tens of thousands of units of TIGI's "S Factor<sup>TM</sup>, Creamy Molding Wax" (hereinafter, "TIGI Creamy Wax").

10. During 2006, Bocchi shipped tens of thousands of units of TIGI Creamy Wax to TIGI.

11. Beginning in around June 2006, TIGI began receiving complaints from its customers that the TIGI Creamy Wax supplied by Bocchi was defective and non-conforming.

12. Subsequently, TIGI has discovered that tens of thousands of the units are non-conforming and defective. For example, many of the units, which were intended to have a creamy consistency, instead, are in solid form, entirely unsuitable for the purpose of being applied to hair.

### III.

#### **FIRST CAUSE OF ACTION** *(Breach of Implied Warranty)*

13. Plaintiff incorporates and re-alleges the averments contained in paragraphs 1 through 12, as if set forth in full.

14. A warranty that goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. TEX. BUS. & COM. CODE, § 2.314. Goods to be merchantable must be at least fit for the ordinary purposes for which such goods are used. *Id.* § 2.314(b)(3).

15. Defendant Bocchi, in its manufacture and sale of the TIGI Creamy Wax in question impliedly warranted to TIGI that the TIGI Creamy Wax was of merchantable quality and fit for the purposes intended.

16. Notwithstanding such implied warranty, the TIGI Creamy Wax was defective in its manufacture and non-conforming.

17. Defendant Bocchi has thereby breached the implied warranty.

18. Plaintiff TIGI has suffered damages as a direct result of Defendant Bocchi's breach of this implied warranty.

IV.

**SECOND CAUSE OF ACTION**  
*(Breach of Contract)*

19. Plaintiff incorporates and re-alleges the averments contained in paragraphs 1 through 18, as if set forth in full.

20. Plaintiff TIGI and Defendant Bocchi agreed that TIGI would pay Bocchi a sum certain in exchange for Bocchi providing conforming TIGI Creamy Wax to TIGI.

21. In accordance with this agreement, TIGI paid Bocchi for units of TIGI Creamy Wax delivered to TIGI.

22. As described in previous paragraphs of this Complaint, thousands of units of TIGI Creamy Wax provided by Bocchi were not conforming.

23. Bocchi's activities constitute breach of contract under Texas law.

24. Plaintiff TIGI has suffered damages as a direct result of Defendant Bocchi's breach of contract.

V.

**THIRD CAUSE OF ACTION**  
*(Attorney's Fees)*

25. Plaintiff incorporates and re-alleges the averments contained in paragraphs 1 through 24, as if set forth in full.

26. It has become necessary for Plaintiff TIGI to retain the undersigned attorneys to pursue the claims set forth herein, and TIGI has agreed to pay reasonable attorneys fees.

Pursuant to Texas law, TIGI is entitled to recover its reasonable and necessary fees incurred in prosecuting this action.

**VI.**

**DEMAND FOR JURY TRIAL**

27. TIGI demands a trial by jury for all fact issues in this case.

**VII.**

**PRAYER**


WHEREFORE, PREMISES CONSIDERED, TIGI prays that the Court summon Bocchi to appear herein, and, after hearing, that TIGI have judgment against Defendant for:

- a. All actual damages caused by Defendant's conduct;
- b. Treble and or/ punitive damages in an amount to be determined by the trier of fact;
- c. TIGI's reasonable and necessary attorneys fees;
- d. Pre- and postjudgment interest at the highest lawful rate;
- e. Costs of court; and
- f. All such other and further relief to which TIGI may show itself justly entitled.

Dated: May 25, 2007

Respectfully submitted,

**FISH & RICHARDSON P.C.**

By:   
Geoffrey S. Harper  
Texas Bar No. 00795408  
1717 Main Street, Suite 5000  
Dallas, Texas 75201  
Telephone: (214) 747-5070  
Facsimile: (214) 747-2091

Thad C. Kodish  
Fish & Richardson P.C.  
1180 Peachtree Street, N.E.  
21st Floor  
Atlanta, Georgia 30309  
Telephone: (404) 892-5005  
Facsimile: (404) 892-5002

**Attorneys for Plaintiff,  
TIGI LINEA LP**

MAY 25 2007

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

TIGI LINEA LP

(b) County of Residence of First Listed Plaintiff DALLAS  
(EXCEPT IN U.S. PLAINTIFF CASES)

ORIGINAL

## DEFENDANTS

BOCCHI LABORATORIES, INC.

County of Residence of First Listed Defendant Los Angeles  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED

3-07 CV 0943-P

## (c) Attorneys (Firm Name, Address, and Telephone Number)

Geoffrey S. Harper  
Thad C. Kodish  
Fish & Richardson P.C.  
1717 Main Street, Suite 5000  
Dallas, Texas 75201  
Telephone: (214) 747-5070 Telecopy: (214) 747-2091

## Attorneys (If Known)

Robert Fitwarner  
Corporate Controller  
Bocchi Laboratories, Inc.  
26321 Ferry Court  
Santa Clarita, CA 91350

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1. U.S. Government Plaintiff
- ☒ 3. Federal Question (U.S. Government Not a Party)
- ☐ 2. U.S. Government Defendant
- ☒ 4. Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |   |                                       |   |   |                                       |
|---|---|---------------------------------------|---|---|---------------------------------------|
| Citizen of This State                   | PTF <input checked="" type="checkbox"/> 1 | DEF <input type="checkbox"/> 1        | Incorporated or Principal Place of Business In this State     | PTF <input checked="" type="checkbox"/> 4 | DEF <input type="checkbox"/> 4        |
| Citizen of Another State                | <input type="checkbox"/> 2                | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5                | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3                | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6                | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input checked="" type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - - Med. Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth In Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/ Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus: General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

## V. ORIGIN

(PLACE "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Violations of 18 U.S.C. §1030, §2701, Texas statutes and common law arising from unlawful computer hacking and theft of trade secrets.

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

Demand: \$

CHECK YES only if demanded in Complaint

JURY DEMAND

☒ Yes☐ No

## VIII. RELATED CASE(S) IF ANY

(See Instructions)

JUDGE s

DOCKET NUMBER

DATE

05/25/2007

SIGNATURE OF ATTORNEY OF RECORD

TYPE NAME OF ATTORNEY

Geoffrey S. Harper

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

JS44 Reverse (Rev. 12/96)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

Authority for Civil Cover Sheet